



**Address by the Public Protector, Adv Thuli Madonsela, during the
IAMCR conference at the University of KwaZulu-Natal on Tuesday,
July 17, 2012**

**Programme Facilitator, Ms Siki Mgabadelu;
President of IAMCR, Prof. Annabelle Sreberny;
Members of the IAMCR;
Advocate George Bizos;
Mr Mzilikazi wa Afrika of the Sunday Times;
Mr Sam Sole of the Mail and Guardian;
Members of the academic fraternity;
Members of the media;
Ladies and gentlemen;**

It is an honour and privilege to address this international academic conference on the important issue of freedom of the media within a broader dialogue under the theme South- North Conversations.

President Nelson Mandela once said:

“Instrumental in keeping us in touch and informed, in the dissemination of both the good news and the bad, the sensational and the mundane, has been the media. I wish to pay tribute on this occasion to their unflinching, and often ill-appreciated, commitment to their task and their contribution to a more informed and hence a better world.”

It seemed appropriate to seek some insights on the matter under discussion from democratic South Africa's first president not only because he appears to have pearls of wisdom on virtually all key social challenges but also because tomorrow we will once more be celebrating his arrival in this world. Under the *67 Minutes* campaign we have come to transcend celebrating President Mandela's birthday and to integrate in our lives some of the lessons he has taught us particularly in the area of human solidarity.

On 18 July, 94 years ago, a boy was born in the nondescript rural village of Mveso, outside Mthatha in the Eastern Cape. He grew up to become an embodiment of the best of humanity and the selfless pursuit of common good.

President Mandela's life and indeed the 67 minutes campaign provide examples of the difference we can make if we appreciate that the smallest of deeds can make a difference.

Edmund Burke, an Irish orator and philosopher said in the 1700s *“Nobody can make a greater mistake than he who did nothing because he could only do little”*. If you believe that 67 minutes is a waste, I invite you to consider a story I was told when I was growing up. The story involved a man who stood all day on the beach throwing back to sea star fish that had beached themselves. A passerby asked: *“What difference does it make as you cannot save all of them”*. The man on the beach took one compassionate gaze at a star fish in his hand and proudly announced to the passerby *“It makes a difference to this one”* and gently threw it into the sea.

The thought of small actions with enormous consequences brings me back to the issue at hand, freedom of the media.

Freedom of the media is a globally recognized aspect of the right to freedom of expression, which is entrenched in among others, the Universal Declaration of Human Rights. *Article 19 of the Universal Declaration of Human Rights, 1948 states that, “Everyone has a right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and seek, receive and impart information and ideas through any media and regardless of frontiers.”*

Our continent’s key human rights instrument, the African Charter on Human and People’s Rights also recognizes and entrenches the right to free flow of information. Article 9 (1) of the African Charter on Human and People’s Rights provides that *“Every individual shall have the right to receive information.”* Article 9 (2) *“Every individual shall have the right to express and disseminate his opinions within the law.”*

South Africa’s Constitution, which is a globally celebrated expression of the will of the people regarding the regulation of their common destiny, has a clear entrenchment of freedom of expression, incorporating freedom of the media, in its bill of rights

Section 16 of South Africa’s Constitution states that **“Everyone has the right to freedom of expression, which includes -**

- a. **freedom of the press and other media;**
- b. **freedom to receive or impart information or ideas ...”**

Our Constitution clearly opts for a clean break from where we stood 35 years ago when several South African newspapers were banned and their editors jailed for reporting the truth, a day that would later be known as “Black Wednesday”.

Constitutionally speaking, we are much closer to the ideals that informed the Windhoek Declaration, a statement of free press principles drawn up by African journalists in 1991. We are equally closer to the vision that inspired the United Nations General Assembly, in 1993, to declare May 3 World Press Freedom Day in a bid to raise awareness about the importance of press freedom and to remind governments of their duty to uphold freedom of expression.

But what is the reality on the ground? Again I can state without fear of contradiction that press and media freedom is a right that is substantively enjoyed in South Africa. However, that is not to say there are no problems.

One of the issues we have grappled with since the dawn of democracy is the issue of the limits of freedom of expression, including the limits of freedom of the media.

The dialogue was much sharper not so long ago when certain provisions of the Protection of

State Information Bill forced the nation to grapple with the idea of legitimate limitations to freedom of expression in pursuit of national security, the protection of valuable information and related challenges. There was national consensus that like most rights and freedoms, freedom of expression, incorporating press and media freedom could be legitimately restricted.

The vexing question was the permissible circumstances under which freedom of expression incorporating press and media freedom could be legitimately restricted and the extent to such restriction could go without taking away the essence of the protected freedom and undermine its purpose in a democracy.

Questions were raised regarding how far restrictions may go before they undermine the free flow of information necessary to ensure, among others, public accountability in a constitutional democracy. A related question has been how far information regulation could go before it amounts to the kind of muzzling that undermines the very notion of democracy as a dialogue.

There were no easy answers and there probably still aren't. The state was called upon to strike a healthy balance informed by our constitutional founding values, which include openness transparency and human dignity.

The nation recently grappled with yet another animated dialogue on the limits of media freedom, focusing on balancing the right to freedom of expression with rights such as human dignity, equality and privacy. Again there were no easy answers and the debate was left open ended.

Over the years there's also been a debate on equal access to the media to ensure that the media truly reflects the broadest market of ideas in South Africa's diverse society. Again there were no easy answers with questions raised regarding the impact of ownership on content. In that dialogue, the possibility of social media diversifying voices in contemporary media.

While on the issue of social media, never before have so many voices been able to articulate views freely across the globe. In fact social media has been credited with what has come to be known as the Arab spring. In response to this some regimes have clamped down on it. A few weeks ago I was informed of an African country that recently took the drastic step of passing a law that bans Skype. Fortunately, our challenges as a country are far from such extremes. We are also nowhere near those countries where journalists are killed or made to disappear. I'm not suggesting though that there aren't worrying matters that require to be nipped in the bud.

However, I thought that my final thoughts should be to the media itself. My office has benefitted generously from the media. Today we can say we have made stride in the pursuit of the constitutional injunction to be accessible to all persons and communities because of the support we have received from the media. We also talk of our non-judicial enforcement power depending primarily on moral suasion. Without the media initiating and sustaining a constructive dialogue on the issues we investigate we it would be impossible to speak of moral suasion.

My office aside, I thought it should interest you to know that there are circles in the world that perceive ours as being among the most vicious in the world. I don't know if that is good or bad. Perhaps this doesn't really matter.

What matters though are issues of integrity and ethics? A key thing the media does is to speak truth to power. But truth it must be and nothing less. How do media houses achieve this in this fast paced world where when you snooze you lose. One CEO from a reputable media house informed me of a difficult decision he took not to publish one of our leaked provisional report. I

thought that that was commendable. I also know that many media houses sit with purported dossiers for weeks if not months while painstakingly trying to pierce the truth together before going to print.

It is a difficult balancing act though taking into account that if one is accused of wrong doing they are not likely to answer the phone and say “yes I did it”. Perhaps documentary and trying to stick to the facts as they appear on documents at hand, is the answer. But is it always easy to tell what is authentic and what is not. Although we share space as watchdogs my team and I cannot fully appreciate what goes on in investigative journalism. I also know that a lot of matters my office has investigated and upheld allegations, started with what seemed to be sensational allegations in the media.” This includes serious allegations of corruption and abuse of state resources at various levels of government.

What are the permissible boundaries though? I clearly don’t have the answers. All I can do is raise questions.

With all said and done, there is no doubt in mind that freedom of the media has contributed not only to the quality of the democracy we have but also to our values as a society. A lot of governance issues have been brought to the surface because of media work, particularly investigative journalism. The media has given a voice to communities devastated by bad service delivery. When persons entrusted with public power are suspected of wrong doing, the media brings those issues into the public domain to be debated. I too have not been spared of that. The only time I thought someone had gone too far was when the twitterati accused my weave of maladministration.

We have a state that generally accepts that a free media is essential for good governance, democracy and the rule of law. There is also general consensus that media freedom can contribute meaningfully to the generation of shared values as a society using the constitution as the foundation of such shared values.

I must again express my office’s deepest gratitude for the sustained media interest in our work. We are currently engaged in public hearings relating to systemic investigations on RDP (social) housing and the conversion of panel vans into minibus taxis. The public hearings are part of our 3rd Annual Stakeholder Dialogue.

This year’s theme ***“Joining hands to end maladministration and ensure responsive service delivery: Focus on RDP houses and regulatory gaps on the illegal conversion of panel vans into taxis.”***

The stakeholder dialogue, incorporating public hearings, kicked-off last Thursday 12 July 2012 and will run for two months in all nine provinces ending on 31 August 2012. Apart from public hearings, the process will also include community outreach clinics that will take place in all nine provinces.

With the miniscule budget we have for marketing and communications, we would not have undertaken this mammoth task if we did not have faith in the media facilitating an extensive national dialogue on the matter. The media has indeed joined hands with us on uncovering maladministration and some of the causal factors. Some media houses going the extra mile, bringing to the fore case studies we would have never known about. They are already enabling our people to tell their stories, which is what we hope to achieve in the public hearings.

The one issue I would be remiss not to raise though is the issue of the publishing leaked reports. Dear colleagues, this is wrong and cannot be justified on public interest.

I am scheduled to meet with the Press Ombudsman to deliberate on this matter as it poses a major threat to the integrity of our investigations. The leaks are definitely not from my office. They always occur shortly after the reports are placed into the hands of the external parties involved in the investigation.

Early last year, I had an opportunity to interface with the South African National Editors' Forum and at that meeting, I indicated that it was ***“accepted globally that one of the factors that underpin good governance, incorporating an accountable and responsive state, is the existence of an independent, impartial and credible media. This is mainly due to the fact that state accountability and good governance depend on transparency and openness.”***

I also indicated that this made the media a very powerful institution but I also highlighted that with power comes responsibility. To protect media freedom, the media must join hands to ensure internal ethical conduct and integrity. In this regard, the work of the Press Council must be applauded. In so far as the state is concerned, we trust that the right balance will be found in the final version of the Protection of State Information Act.

The media in all its forms, including social media, has an unparalleled role in ensuring, among others, that public power is exercised with full accountability, integrity and responsiveness.

Thank you.

Adv TN Madonsela

Public Protector of the Republic of South Africa